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Illinois Department on Aging

Governor Rod Blagojevich
Director Charles D. Johnson

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Advance directives offer direction, support

In an effort to provide for their heirs and dependents, many people are careful to purchase instruments of security like insurance. But, according to Illinois experts in social policy and elder rights, the public often fails to discourage another crisis: the critical transfer of authority in case of incapacitation.

"The best thing we can do for the people we love is to give them peace of mind," said Charles D. Johnson, director of the Illinois Department on Aging.

"The preparation of an advance directive, the assignment of authority to make decisions or to manage money or property in case of incapacitation is, in my experience, a practical expression of real concern for those who love and care for us," Johnson said. "I urge people of all ages in Illinois to prepare the appropriate advance directives that will identify their own wishes and offer guidance to their loved ones if it is needed. An advance directive is an act of love."

In Illinois, an advance directive is a term for the legal documents that allow people to make decisions or express wishes about health care and estate management in the event they become unable to personally make decisions or express their wishes. The documents can be revoked at any time, but the best practice is to revoke the directive by signing a formal, written revocation. Advance directives, and other legal instruments include:

- **Power of Attorney for Health Care** — gives a named agent the authority to make health care decisions on behalf of one who is incapacitated.
- **Living Will** — gives a doctor the authority to withhold life support if one is terminally ill. It must be signed in the presence of two witnesses who are not related to the signer by blood or marriage and thus might be beneficiaries of the signer's estate, or would financially benefit from the death of the person who is signing the Living Will.
- **Will** — contains a person's instructions about disposition of property at his or her death. It must be signed and witnessed by two people who are not benefactors.
- **Power of Attorney for Property** — gives the named agent the authority to make decisions about assets, finances, bank accounts and other types of property. It must be notarized and witnessed.
- **Living Trust** — allows a person to transfer property during his or her lifetime, the distribution of that property to the beneficiaries being controlled by the trustee according to the trust document.

Lee Beneze, a lawyer at the Department on Aging who specializes in elder rights, echoes the importance of these advance directives. "Most people have worked hard to establish their independence and support their families," he said. "This is an extension of that independence and responsibility."

Beneze offered these suggestions:

- Review all of these documents annually.
- Make several copies of each of the directives you used. Keep the original in a file at your home, a copy in the glove compartment of your car, and give copies to your agent, doctor, lawyer and key family members or friends.
- Keep a list of all of the people to whom you have given copies.
- If you travel to other states regularly, make advance directives in those states, as well. Although most of these documents are valid in other states, that is not always true. Each state is different, Beneze said, so people who travel, "snowbirds," for instance, should comply in the states where they visit for frequent or lengthy stays.

Beneze noted that all powers of attorney under Illinois state law are now "durable" unless they state otherwise. This means that an agent can act for an incapacitated person during that period of incapacity.

The Illinois Health Care Surrogate Act allows family members, friends or guardians to make a broad range of medical treatment decisions on behalf of an incapacitated person who cannot make and communicate personal decisions and who does not have other advance directives. Surrogate decisions, which include decisions about life support, apply only if the treating doctor certifies in writing that the patient lacks the ability to make and communicate decisions about medical treatment. The law permits the surrogate decision-maker to forego life-sustaining treatment only if the patient is terminally ill, permanently unconscious or diagnosed with an incurable or irreversible, terminal condition that causes severe pain or other inhumane burden.

Illinois also mandates the distribution of property if a state resident dies without a will.

"Each of us is unique," Beneze said. "The best approach is to decide on your goals, then consult with a professional who can decide which of these legal tools best achieves those goals."

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